MFA 104/2001
BEFORE
HON'BLE MR. JUSTICE S. TALAPATRA
Heard Mr. S.S. Sharma, learned senior counsel, assisted by Mr. K.K. Bhatta, lear ned counsel appearing for the appellant-National Insurance Company Ltd. No repre sentation from the respondents though it appears from the record that notices we re properly served on all the respondents.
2. By this appeal filed under Section 30 of the Workmen's Compensat ion Act,1923, the judgment and award dated 28.08.2001 as passed by the learned C ommissioner, Workmen's Compensation, Nagaon in NWC Case No.08.1999 has been chal lenged. No substantial question of law even though was not formulated at the tim e of admitting this appeal by order dated 08.02.2001, the solitary substantial q uestion of law that is involved in this appeal is whether the learned Commission er has committed wrong by assessing compensation on the basis of the amended pro vision of Section 4(1), Explanation-II as incorporated in the Workmen's Compensa tion Act, 1923 (as amended by Act 46 of 2000 w.e.f. 08.12.2000).
3. The fact not in dispute is required to be briefly encapsulated f or purpose of appreciating the substantial question of law as projected to be in volved in the appeal.
The father of the claimants namely, Gopi Mohan Paul, now decease d, was employed as the driver of the vehicle bearing registration No.ASN-2497 (B us), owned by the respondent No.5 herein namely, Smti Gauri Priya Bhattacharjee. On 14.12.1998, while the said driver was plying the vehicle through the Baithal angsu Amsoi route, the vehicle suddenly met with an accident at Garampani. As a result a passenger died on the spot and the driver sustained grievous injuries o n his person. The injured workman was first taken to the Nagaon Civil Hospital o n 14.12.1998, where he was treated till 18.12.1998. He was found to have fractur es on his rib in the right chest and on his forearm. Later on, he was treated at the Jotshna Clinic, Nagaon from 18.12.1998 to 19.12.1998. He was then taken hom e, where his treatment was continued and during the continuance of his treatment , he died on 17.09.2000. A case was registered by the Raha Police Station being Raha P.S. Case No.98/1998 under Sections 279/304A/338/427 of IPC. It emerged tha t the said vehicle was insured by the appellant vide their Policy No.9716701548 and Certificate No.03548 during the relevant period. The insurer was impleaded a s the party and they also filed their written statement.
4. On appreciation of the evidence as led by the claimants, the lea rned Commissioner arrived at a finding that the cause of death was chronic surgi cal emphysoma due to fracture of the rib following the RTA and cardio respirator y failure. There was no denial about the deceased's being the driver of the said vehicle. He suffered the fatal injuries in the accident which occurred on 14.12 .1998 and ultimately succumbed to his injuries. The Commissioner determined the age of the deceased workman as 45 years and accordingly selected the factor at 1 69.44. On consideration of the minimum wages as was prevalent at the time of acc ident, the monthly income of the deceased was assessed at Rs.3,000/- per month a nd in the following manner, the compensation was assessed :
50% of Rs.3000.00 X 169.44 = Rs.2,54,160.00. In addition to this the claimants are also entitled to half monthly payment @ 25% of his total monthly salary paya ble half monthly w.e.f. 15.12.98 to 17.09.2000 from the period of disablement of the deceased driver, which comes to Rs.31,500/-. Moreover, the claimants are en titled to simple interest @ 12% P.A. on the amount of compensation w.e.f. 14.01. 99 as determined above together with funeral cost of Rs.4000/- payable to the el dest surviving dependant.

5. Mr. S.S. Sharma, learned senior counsel appearing for the appell ants emphatically contended that on the relevant date of accident, as per Explan ation-II of Section 4(1) of the Workmen's Compensation Act, where the monthly wa ges of a workman if exceeded Rs.2,000/- his wages for the purpose of clause (a) and clause (b) shall be deemed to be Rs.2,000/- only and taking 50% of the month ly wages multiplied by the relevant factor was only payable to the claimant. But the learned Commissioner has accepted Rs.3,000/- as per the legislative change

as brought by the amendment in the Workmen's Compensation Act, 1923 (Act 46 of 2000 w.e.f. 08.12.2000), whereunder 'Rs.2,000/-' has been substituted by 'Rs.4,000/-' in Explanation-II to Section 4(1) of the Workmen's Compensation Act. The assertion is categorical that the said amended provision cannot be made retrospective inasmuch as the workman is only entitled to the compensation due to him on the date of accident or from the date of death, whichever is later. There is no dispute that the death occurred on 17.09.2000 whereas the said Amendment Act has been given effect from 08.12.2000. As such, the assessment as has been made by the Commissioner, Workmen's Compensation is not sustainable.

6. This Court finds sufficient force in the submission of Mr. S.S. Sharma, learned senior counsel for the appellant as the issue had fallen for consideration of the Apex Court in Kerala State Electricity Board & Anr. Vs. Valsala K. & Anr., as reported in (1999) 8 SCC 254, where a Four Judge Bench of the Apex Court held that enhanced rates introduced by the amendment shall not be available for purpose of assessing compensation in view of the legislative changes as brought about by the amendment. The Four Judge Bench of the Apex Court in Pratap Narain Singh Deo Vs. Srinivas Sabata, as reported in (1976) 1 SCC 289, held that an employer becomes liable to pay compensation as soon as the personal injury is caused to the workman by the accident which arose out of and in the course of employment. Thus, the relevant date for determination of the rate of compensation is the date of the accident and not the date of adjudication of the claim.

7. Compensation under Section 4 of the Workmen's Compensation Act shall be paid as soon as it falls due. In Section 4-A(3), it has been further clarified that where any employer is in default in payment the compensation due under this Act within one month from the date it fell due, the Commissioner shall -

(a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and (b) if, in his opinion, there is no justification for the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent of such amount by way of penalty. Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.

Therefore, the liability emerges the moment it fell due with the injury or death received in an accident in the course and out of the employment.

8. The Apex Court in Valsala K.(supra) enunciated the law as under :

4. A two-Judge Bench of this Court in New India Assurance Co. Ltd. v. V.K. Neelakandan however, took the view that Workmen's Compensation Act, being a special legislation for the benefit of the workmen, the benefit as available on the date of adjudication should be extended to the workmen and not the compensation which was payable on the date of the accident. The two-Judge Bench in Neelakandan case however, did not take notice of the judgment of the larger Bench in Pratap Naraian Singh Deo case, as it presumably was not brought to the notice of their Lordships. Be that as it may, in view of the categorical law laid down by the larger Bench in Pratap Singh Deo case the view expressed by the two -Judge Bench in Neelakandan case is not correct.

5. Our attention has also been drawn to a judgment of the Full Bench of the Kerala High Court in United India Insurance Co. Ltd. v. Alavi wherein the Full Bench precisely considered the same question and examined both the above-noted judgments. It took the view that the injured workmen becomes entitled to get compensation the moment he suffers personal injuries of the types contemplated by the provisions of the Workmen's Compensation Act and it is the amount of compensation payable on the date of the accident and not the amount of compensation payable on account of the amendment made in 1995, which is relevant. The decision of the Full Bench of the Kerala High Court, to the extent it is in accord with the judgment of the larger Bench of this Court in Pratap Singh Narain Singh Deo v.

Srinivas Sabata lays down the correct law and we approve it.

9. Therefore, the correct enunciation of law is that the relevant date for consideration is the date of the accident not the date of adjudication and as such the Commissioner for Workmen's has committed serious illegality in preferring the date of adjudication over the date of accident. As such, this court is bound to re-assess the compensation as per the law as was prevalent at the relevant point of time. The finding of the learned Commissioner as stated as regard to the mode of assessing the compensation is hereby set aside. The compensation that would be payable to the claimants as the dependants of the deceased workman is required to be assessed as under :

50% of Rs.2,000/- X 169.44 = Rs. 1,69,440/-. In addition to this, the claimants are also entitled to half monthly payment @ 25% of his total monthly salary payable half monthly w.e.f. 15.12.98 to 17.09.2000 from the period of disablement of the deceased driver, which comes to Rs.15,000/-. The claimants are also entitled interest @ 12% per annum on the amount of compensation w.e.f. 17.09.2000 on the total amount. With this amount, no funeral cost would be added since that provision has also been incorporated in the statute w.e.f. 08.12.2000. Thus, the total compensation comes to Rs.1,84,440/- (rupees one lakh eighty four thousand four hundred and forty)only. This amount would carry interest @ 12% per annum w.e.f. 17.09.2000 till the payment is made.

10. Since the payment was stayed by the order dated 08.02.2002 passed by this Court, the Commissioner for Workmen's Compensation shall pay the entire compensation, if not already paid and the excess be returned to the appellant forthwith.

11. The appeal is allowed to the extent as indicated above.

Send down the LCRs forthwith.